

REMARKS/ARGUMENTS

Initially, Applicant and the undersigned wish to extend their gratitude to the Examiner for her courtesy in granting recent combined telephonic and personal interviews with Applicant and the undersigned on June 11, 2009 and August 6, 2009. Applicant and the undersigned also thank the Examiner for her helpful insight offered during those interviews.

With the foregoing in mind, independent Claims 1 and 20 of the present application have been amended herein in a manner believed to overcome the Examiner's remaining objections to the claims.

More particularly, it was pointed out by Mr. Rogers and the undersigned during both of the aforementioned interviews that the elastomeric means 68 (FIGS. 12 and 13) of Blanchard (U.S. Patent No. 3,358,698) biases the members 60 and 62 of the Blanchard device toward either an open position or a closed position whereas the presently claimed device has elastomeric means which, significantly, biases the first and second members only toward a closed position and never toward an open position, (while also conforming to gathered strands of a user's hair when the hair gripping portions come into contact with gathered strands of a user's hair). The Blanchard device is incapable of functioning in the manner of Applicant's claimed device.

Indeed, to underscore his contentions in favor of patentability, Applicant demonstrated to the Examiner a working model of the Blanchard device during the August 6, 2009

interview. During that demonstration, Mr. Rogers physically showed the Examiner the inability of the Blanchard model to perform as does the presently claimed invention.

In response to Mr. Rogers' demonstration, the Examiner inquired as to the "criticality" of Applicant's construction vis-à-vis the Blanchard device. Such "criticality" is discussed at length at page 13, line 6 through page 15, line 20 of Applicant's specification as originally filed, which passage is reproduced herebelow in its entirety (with emphasis added).

FIGS. 8A and 8B depict in schematic form a hypothetical hair holding device 210' constructed in accordance the present invention in which elastomeric closure means do not come into contact with fulcrum means such as those presented by the connecting lugs 218, 220 of FIGS. 7A-7C that contact the elastomeric means 236 in its path of travel from its lower contracted state shown in FIG. 7A to its upper expanded state shown in FIG. 7B. The following discussion is not relevant to the embodiment of the invention depicted in FIGS. 2-6, i.e., device 110, because the distance from the axis of hinge pin 116 to hair gripping portions 122', 124' is considerable, and therefore any danger of the elastomeric means passing the later-described "transition point" is avoided.

Referring to FIGS. 8A and 8B, only essential components of device 210' are included for clarity of illustration and simplicity and brevity of description. In that light, device 210' comprises first and second body members 212', 214' pivotally connected via a hinge pin 216'. Elastomeric means 236' biases the first and second body members together. Arrows "A" represent the motion of first and second body members 212', 214' as they are moved from a closed to an open position. Recall that as the first and second body members are opened, they expand and lift the elastomeric means in a direction toward the hinge pin. Broken lines D-D of FIGS. 8A and

8B represent a datum plane in which lies the hinge axis of hinge pin 216'.

Should elastomeric means 236' cross through the datum plane defined by line D-D, i.e., the "transition point", the elastomeric means would then bias body members 212', 214' in the direction of arrows "B" of FIG. 8B to a sprung-open position limited by contact between the body members or their handle portions. As elastomeric means 236' reaches the datum plane, it is at its most elongated state and therefore possesses its greatest potential energy. Consequently, if no fulcrum means are present, the device moves through the transition point with sudden acceleration—an acceleration that the user perceives as a jerky, erratic motion. This abrupt motion may be so pronounced and awkward that the user may lose her grip on and possibly drop the hair holding device while trying to open or close it.

Referring to FIGS. 9A and 9B, there are shown schematic views of a hair holding device 210 constructed in accordance with FIGS. 7A-7C. Again, only essential components of device 210 are included for clarity of illustration and simplicity and brevity of description. Elastomeric means 236 biases first and second body members 212, 214 together. Again, arrows "A" represent the motion of first and second body members 212, 214 as they are moved from a closed to an open position. As they are opened, the first and second body members expand and lift elastomeric means 236 in a direction toward the hinge pin 216. And, again, broken lines D-D of FIGS. 9A and 9B represent a datum plane in which lies the hinge axis of hinge pin 216.

The distal ends of connecting lugs 218, 220 are spaced from datum plane D-D and define fulcrum means or fulcra. Elastomeric means 236 comes into contact with the fulcrum means as device 210 is moved into its open position shown in FIG. 9B, thereby preventing the elastomeric means from passing through the transition point and the device 210 from reaching the sprung-open position of FIG. 8B.

The distance between elastomeric means 236 and the fulcra defined by lugs 218, 220 may be referred to as

the fulcrum distance. The inventors have observed that if the fulcrum distance is comparatively small, the elastomeric means is brought into contact with the fulcrum means throughout a substantial period of the transition of the hair holding device from its closed to its open position. In that event, an essentially smooth and constant handle squeezing force is required to open the device. However, if the fulcrum distance is comparatively large, the elastomeric means comes into contact with the fulcrum means somewhat late in the transition of the device from the closed to open position. Under these circumstances, a relatively greater squeezing force will be required for much of the transition, followed by rapid acceleration to a relatively lesser force at the end of the transition (similar to the transition one experiences when drawing the string of a compound archery bow). This abrupt change in force required to open the device and the attendant rapid change in opening speed produces in the user a sensation not unlike that which the user would experience when device 210' passes through the transition point discussed in connection with FIG. 8B, which may cause the user to lose control of the device. The fulcrum distance can be reduced by increasing the distance from the datum plane D-D to the distal ends of the lugs 218, 220 or by installing the elastomeric means 236 closer to the lugs.

It will be appreciated from the preceding passage that a hair holding device constructed according to the invention does, in fact, possess critical structural and functional advantages over the Blanchard device. Such advantages are not trivial. That is to say, a hair holding device constructed according to that of Applicant's claims 1 and 20 plainly avoids the jerky or erratic transition that the Blanchard device experiences when moving from its "sprung-closed" to "sprung-open" positions.

As a consequence of the criticality and concomitant advantages of Applicant's claimed invention versus the Blanchard

device, claims 1-20 are believed to be in condition for allowance.

New independent claims 21-27 call for hair holding devices which also patentably distinguish Applicant's invention from the Blanchard design.

Turning first to claim 21, there is described a hair holding device having, inter alia, first and second body members defining an area for receiving gathered hair wherein -- unlike Blanchard -- while the first and second body members move from any open position, the elastomeric means of the device moves toward contact with the wearer's hair.

Similar to claims 1 and 20, claim 22 is distinguished from Blanchard in that the elastomeric means biases the first and second members into a closed position.

Claim 23 departs from Blanchard in that the first and second members define an area for receiving a user's hair and the elastomeric means intersects such area.

Claim 24 calls for elastomeric means that serve to reduce the volume of the hair-receiving space defined by the axial length of the first and second body members. This is neither disclosed nor suggested by Blanchard. That is to say, the elastomeric means of Blanchard lies entirely outside the axial length of the first and second body members.

Claim 25 is distinguishable from Blanchard by elastomeric means that contact inner surfaces of the first and second body members. The elastomeric means of Blanchard contact only outer surfaces of the first and second body members.

Claim 27 recites -- again, unlike Blanchard -- a first body member and a second body member abutting a first portion of the user's hair and the elastomeric means abutting a second portion of the hair. No portion of the elastomeric means of Blanchard abuts any portion of the wearer's hair.

Claim 28, similar to claim 24, calls for elastomeric means that passes through the hair-receiving area as limited by the axial length of the first and second body members.


In addition to many other features, expressed in various combinations, claims 29-31 define the elastomeric means as not moving toward the hinge means and moving substantially toward contacting the gathered hair as the hair gripping portions move toward a closed position. This is not taught by Blanchard. In fact, as the Blanchard device closes from its open position, the elastomeric means initially moves toward the hinge means. In contrast, Applicant's claimed elastomeric means never moves toward the hinge means as the device is being closed.

Finally, new claim 32 approximates the language of the allowable claim the Examiner sent to the undersigned by email dated August 18, 2009. It is believed that claim 32 is also patentable over Blanchard.

The instant application is thus believed to be in condition for allowance. Accordingly, early issuance thereof is earnestly solicited.

Respectfully submitted,

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